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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7231/WO/PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP 03/11359	International filing date (day/month/year) 14.10.2003	Priority date (day/month/year) 14.10.2002
International Patent Classification (IPC) or both national classification and IPC A23F5/38		
Applicant NESTEC S.A.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
- ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
- These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
- I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 20.02.2004	Date of completion of this report 10.03.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Georgopoulos, N Telephone No. +49 89 2399-2634 

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International application No. **PCT/EP 03/11359**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-16 as originally filed

Claims, Numbers

1-29 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	6, 7, 9, 11-14, 16, 18-21, 23-28
	No: Claims	1-5, 8, 10, 15, 17, 22, 29
Inventive step (IS)	Yes: Claims	
	No: Claims	1-29
Industrial applicability (IA)	Yes: Claims	1-29
	No: Claims	

2. Citations and explanations

see separate sheet

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Item V

- 1 Reference is made to the following documents:
D1: WO-A-02 062152
D2: US-A-3 121 635
- 2 The subject-matter of present independent claims 1, 15 and 29 as well as that of present dependent claims 2-5, 8, 10, 17, 22 and 29, is not novel (Art.33 (2) PCT).
- 2.1 D1 anticipates the subject-matter of present claims 1-5, 8, 10, 15, 17, 22 and 29 (see page 5, line 14 - page 7, line 7; examples 1, 3 and 5; claims 1-47 of D1): the pore size range according to present claim 1 is derivable from the tablet dimension and porosity data disclosed in present examples 1 and 3.
- 3 In contrast thereto, none of the documents D1 and D2 discloses a **packaged** coffee product as claimed in present independent claim 11.
- 4 However, the subject-matter of present independent claim 11 does not involve an inventive step (Art.33 (3) PCT), in regard of the combination (D1+D2) (see page 5, line 14 - page 7, line 7; examples 3 and 5; claims 1-47 of D1; and column 2, lines 1-26; and claims 1-11 of D2), due to the fact that:
a/ the technical problem to be solved by D1 is the same as in the present application (i.e. how to increase the solubility or dispersibility of a tablet in water; see page 2, lines 11-25 of D1 as well as page 7, lines 31-32 of the present description); and
b/ the difference (inasmuch as present claim 11 is concerned) between the product of D1 and that of the present invention (i.e. the presence of a moisture resistant material) is found in D2 (said document solves the technical problem of improving the dissolution of coffee tablets too; see column 1, lines 46-72 thereof).
- 5 It does not appear that present dependent claims 6, 7 and 9 (referring back to present independent claim 1) and present dependent claims 16, 18-21 and 23-28 (referring back to present independent claim 15), contain technical features that would establish novelty and / or inventive step for the subject-matter of the respective independent claims.
- 6 Moreover, it does not appear that present dependent claims 12-14 contain technical

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features that would establish inventive step for the subject-matter of present independent claim 11, as they merely represent trivial design possibilities (e.g. presence of aromatic volatiles in the coffee aroma; see present claim 12) not connected to any unexpected technical effect or advantage.

- 7 The subject-matter of present claims 1-29 is susceptible of industrial application in the field of food industry (Art.33 (4) PCT).
- 8 The applicant's attention is also drawn to the following points:
 - 8.1 Contrary to the requirements of Rule 5.1 (a) (ii) PCT, the relevant background art disclosed in the documents D1-D2 is not mentioned in the description, nor are these documents identified therein.